

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CORNING UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2012090255

ORDER DENYING REQUEST FOR
CONTINUANCE OF PREHEARING
CONFERENCE

On October 16, 2012, Brian Gonsalves, attorney for Student, filed a request to continue the prehearing conference currently set for October 22, 2012, on the grounds of an unspecified unavailability. On October 17, 2012, the Corning Union High School District (District) filed an opposition.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) The Office of Administrative Hearings (OAH) considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Denied. All prehearing conference and hearing dates are confirmed and shall proceed as calendared. Mr. Gonsalves fails to provide any reason for his unavailability. Furthermore, Adams Esq. is a law firm with multiple offices

throughout the state of California, and in at least one neighboring state. Presumably, Adams Esq. has multiple attorneys in multiple locations. While OAH is not disinclined to grant the request for continuance, Mr. Gonsalves fails to establish good cause because he fails to provide any reason for his unavailability and fails to provide any reason as to why another attorney within Adams Esq. is unavailable to handle the prehearing conference. Accordingly, the request to continue is denied without prejudice.¹

IT IS SO ORDERED.

Dated: October 17, 2012

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings

¹ In its opposition, District states that it expects the request to be granted, therefore, it has unilaterally delayed the filing of its prehearing conference statement. District is ordered to timely file its prehearing conference statement.